UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/753,082	12/28/2000	Anthony N. Sarra	10559/316001/P9677	3510

21552 7590 04/21/2005

MADSON & METCALF
GATEWAY TOWER WEST
SUITE 900
15 WEST SOUTH TEMPLE
SALT LAKE CITY, UT 84101

EXAMINER	
LE, DIEU MINH T	

ART UNIT	PAPER NUMBER
2114	

DATE MAILED: 04/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/753,082	SARRA ET AL.	
	Examiner	Art Unit	
	Dieu-Minh Le	2114	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *28 January 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,4-14 and 17-33* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1, 4-14, 17-33* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

1. This Office Action is in response to the amendment filed January 28, 2005 in application 09/753,082.

2. Claims 1, 4-14, and 17-30 are again presented for examination; claims 31-33 have been added.

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1, 4-14, 17-30 are again rejected under 35 U.S.C. 102(e) as being anticipated by Snow (U.S. Patent 6,640,317).

As per claims 1, 4-14, 17-30, see the previous office action, mailed on 11/05/2004 for the teaching of Snow.

Applicant asserts that Snow failed to teach or suggest the following:

a. "the monitoring includes an ***examination*** of the system calls, or that such monitoring of system calls occurs continuously."

b. "continuously monitoring system calls made by an application" and "detecting a failure in a system call made by the application."

c. "user of the device can determine the repair mechanism."

Examiner respectfully transverses Applicant's argument as follows:

a. In response to Applicant's argument that the references fail to show certain features of Applicant's invention, it is noted that the feature upon which Applicant relies (i.e., the monitoring includes an ***examination*** of the system calls, or that such monitoring of system calls occurs continuously) is not recited in the rejected claim. Although the claims is interpreted in light of the specification, limitations from the specification is not read into the claims. *In re Van Guens, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).*

b. First, Examiner would like to bring Applicant attention to both Snow's method, system, and apparatus for ***automatically detecting and repairing damage files, applications***, and settings

with data computer system [col. 1, lines 28-31 and col. 2, lines 44-46].

Second, it is totally not true that Snow failed to teach Applicant's invention. Snow explicitly illustrated the "***continuously monitoring system calls***" as depicted in figure 7. This flow chart clearly shows the "***continuously monitoring system***" capability via several loopbacks from each of four decision or comparison features in order to determining and implementing a damage ***detection and repair facility*** [col. 9, lines 54 through col. 10, lines 50].

Third, Snow explicitly and clearly disclosed the ***"continuously monitoring system" in col. 10 lines 34-36].***

c. It is not true that Snow failed to teach Applicant's limitation. It is so clear that Snow demonstrated the "user of the device can determine the repair mechanism" limitation via Snow's method, system, and apparatus for ***automatically detecting and repairing damage files, applications*** [col. 1, lines 28-31 and col. 2, lines 44-46], and settings with data computer system. Snow strongly illustrated the users or application developers that identified, set, managed, and resolved problems (i.e., user or application developer detected and repair

application errors or failures) [col. 5, lines 61 through col. 6, lines 5 and col. 6, lines 25-42].

Therefore, this is clearly shown that Snow's teaching capabilities are corresponding to Applicant's invention.

5. New claims 31-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snow (U.S. Patent US 6,640,317).

As per claims 31-33:

Snow does not explicitly address:

- the system calls are continuously monitored by splicing in a function that determines if an error occurred before the system call is actually placed.

However, Snow does teach capabilities of:

- checksum, detection, and repair with signed and known valid version [col. 9, lines 36-46];
- application ***modeling***, setting changes and evaluation based on proper configuration [col. 10, lines 37-50].

Therefore, it would have been obvious to an ordinary skill in the art to apply Snow's capabilities in ensuring the system

continuously monitored, detected and repaired errors [col. 1, lines 28-31 and col. 2, lines 44-46]. By utilizing this approach, Snow's ***modeling function*** (i.e., slicing in a function) can easily determine any errors that occurred before the system process and can improve the system performance operation.

Applicant's arguments filed 01/28/2005 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dieu-Minh Le whose telephone number is (571) 272-3660. The examiner can normally be reached on Monday - Thursday from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel can be reached on (571)272-3645.

The Tech Center 2100 phone number is (571) 272-2100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DIEU-MINH THAI LE
PRIMARY EXAMINER
ART UNIT 2114

DML
4/8/05